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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/732,498	12/06/2000	Derek P. Footer	PD-200153A	9547

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THE DIRECTV GROUP INC
PATENT DOCKET ADMINISTRATION RE/R11/A109
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EXAMINER

SHELEHEDA, JAMES R

ART UNIT PAPER NUMBER

2614

DATE MAILED: 05/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

11/11

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/732,498	FOOTER ET AL.	
	Examiner	Art Unit	
	James Sheleheda	2614	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-17.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

The grounds of rejection presented in the Office Action of 03/01/05 still apply, as the submitted amendments are merely typographical in nature, as previously recommended by the Examiner.

On page 9 of applicant's response, applicant states that that "Assertions of technical facts must always be supported by citation of some reference work recognized as standard in the pertinent art in order for an opportunity to challenge the correctness of the assertion or the notoriety or repute of other cited references" and further that "It is improper for the Examiner to make conclusory and unsupported assertions in regard to the parameters as recited in claim 1."

In response, it is noted that it is in fact well established that Official Notice of features considered to be notoriously well known can be taken without the support of any specific teaching reference. Applicant is directed to section 2144.03 of the MPEP which specifically states "Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known."


In this case, it is noted that a computer server inherently contains a processor, memory and operating system. The use of the particular MHz processor, quantity of memory and operating system recited by applicant in the claim are considered notoriously well known.

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. Even though applicant has not properly traversed the Official Notices taken and has simply provided a general statement regarding the proper use of Official Notice in General, the examiner is further providing evidence of the claimed features. Applicant is directed to the Sun Ultra 5 Service Manual, 805-7763-12 Revision A, Feb. 2000. Page 1-3 indicates the use of a 440, 360 or 333 MHz processor, which meets the claim limitation. Page C-12 indicates the usage of 256 or 512 MB memory, meeting the claim limitation. Finally, page xxi clearly indicates the use of the Unix operating system, as recited in the claim.

Since this particular server system was known at the time of invention, and further recited as usable in applicant's own disclosure (see page 10, lines 18-19), the examiner is confused as to why the applicant may feel these features were not well known. They are clearly contained in a publicly available system known to the applicant.

Finally, on page 11 of applicant's response, applicant argues that Diwan fails to teach or disclose parsing user navigation and transaction data, as recited in claim 14.

In response, it is noted that Brown (5,857,190) was relied upon in the rejection of claim 14 to address the limitation of parsing. In fact, as stated in the previous rejection, Brown specifically discloses wherein the user event information is transmitted to log databases in the headend (column 8, lines 1-9) and that different databases are dedicated to storing different data (column 8, lines 1-9). As indicated in the previous rejection, separating the data for storage in different databases clearly meets the claim limitation of "parsing."


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